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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/785,715	02/16/2001	W. Gregory Chernoff	6631-27092	6811

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BARNES & THORNBURG
11 South Meridian Street
Indianapolis, IN 46204

EXAMINER

FARAH, AHMED M

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 06/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/785,715

Applicant(s)

W. George Chernoff

Examiner

First Last

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1234



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Mar 11, 2003
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other: _____

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-12 are again rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant's written description fails to teach the use of fluid silicone or the viscosity of the silicone as presently claimed.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Kushner U.S.

Patent No. 5,741,509.

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As to claim 1, Kushner teaches a method for treatment of a scar comprising the step of applying a wound dressing to the scar, the wound dressing comprising a topical silicon fluid having a viscosity of 30,000 centistoke (low viscosity silicone gel). See the abstract; Col. 1, lines 39-42; Col. 2, lines 20-21; and claims 1 and 7.

As to claim 2, he teaches that the wound dressing is a nearly weightless thin film, which completely and uniformly covers the desired treatment area (Col. 1, lines 45-48). Therefore, the step of wiping off the excess gel/wound dressing is inherent to his invention.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4-12 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Kushner in view of Lee (U.S. Patent. No. 5,552,162) and in view of Tankovich (U.S. Patent No. 5,897,549).

Kushner, described above, does not teach a method of treating the scar using a laser.

Lee discloses a method of covering scar surface with a silicone-based gel (Col. 5, lines 5-15). Lee further describes an existing therapy for the treatment of hypertrophic scars and keloids using X-ray irradiation (Col. 4, lines 54-64). However, although Lee uses electromagnetic energy

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for treating the scar, he does not use a laser. Tankovich discloses an alternative method for treating hypertrophic scars using a laser (Col. 2, lines 39-46). In reference to claims 6-8 and 10-12 Table 1 and Table 2 of Tankovich clearly show a number of lasers suitable for the treatment. The lasers of Tankovich would provide the parameters specified in the instant claims such as the pulse duration, beam spot size, and the energy density. In reference to claim 5, these lasers include a dye laser with wavelength range of 550 nm to 650 nm.

Therefore, it would have been obvious to one having ordinary skill in the art, at the time of the applicant's invention, to modify Kushner in view of Lee and apply electromagnetic energy to the skin being treated in addition of the gel. It would have been further obvious to one skilled in the art, at the time of the applicant's invention, to modify Kushner in view of Lee and in view of Tankovich to use lasers instead of Lee's X-ray irradiation in order to treat the scars and avoid the potential skin cancer of the X-ray therapy.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See the following references:

U.S. Patent No. 6,503,246 B1 to Har-Shai et al. teaches apparatus and method for treating scars using optical radiation and/or topical silicone gels (see Col. 1, lines 29-33).

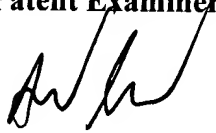
U.S. Patent No. 6,572,878 B1 to Blaine teaches device and method for treating scars using optical radiation and/or topical silicone gels (see Col. 2, lines 14-17)

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to A. Farah whose telephone number is (703) 305-5787. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Linda Dvorak, can be reached on (703) 308-0994. The official fax number for the group is (703) 872-9302; and the fax number for After Final is (703) 872-9303.

A. M. Farah

Patent Examiner (Art Unit 3739)

A handwritten signature in black ink, appearing to be 'A. M. Farah', written over the printed name and title.

June 11, 2003